

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

EDITH DE LA GARZA,

Plaintiff,

V.

R&S DAIRY QUEENS, INC.,

Defendant.

CIVIL ACTION NO. SA-22-CA-1254-FB

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before the Court is the Report and Recommendation of United States Magistrate Judge (docket no. 31), filed on March 31, 2023. The Report and Recommendation concerns Plaintiff Edith De La Garza's motion to dismiss Defendant R&S Dairy Queens, Inc.'s counterclaim. (Docket no. 25). To date, no objections to the Report and Recommendation have been received.¹

Because no party has objected to the Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). The Court has reviewed the Report and Recommendation and finds its reasoning to be neither clearly erroneous nor contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).


IT IS THEREFORE ORDERED that the Report and Recommendation of United States Magistrate Judge (docket no. 31) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that

¹ Any party who desires to object to a Magistrate's findings and recommendations must serve and file his, her or its written objections within fourteen days after being served with a copy of the findings and recommendation. 28 U.S.C. § 635(b)(1). If service upon a party is made by mailing a copy to the party's last known address, "service is complete upon mailing." FED. R. CIV. P. 5(b)(2)(C). If service is by electronic means, "service is complete upon transmission." *Id.* at (E).

Plaintiff/Counter-Defendant's First Amended Motion to Dismiss Defendant/Counter-Plaintiff's Counterclaim Under FED. R. CIV. P. 12(b)(1) (docket no. 25) is GRANTED. This case remains referred to the Magistrate Judge for further proceedings.

It is so ORDERED.

SIGNED this 12th day of April, 2023.



FRED BIERY
UNITED STATES DISTRICT JUDGE